

ANDERSON & KARRENERG
THOMAS R. KARRENERG (#3726)
JARED SCOTT
50 West Broadway, Suite 700
Salt Lake City, UT 84101
Telephone: 801/534-1700
801/364-7697 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
DAVID W. MITCHELL
BRIAN O. O'MARA
STEVEN M. JODLOWSKI
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Attorneys for Plaintiffs

BOIES SCHILLER FLEXNER LLP
SCOTT E. GANT
MELISSA F. ZAPPALA
1401 New York Ave., NW
Washington, DC 20005
Telephone: 202/237-2727
202/237-6131 (fax)
and
CARL GOLDFARB
401 East Las Olas Blvd., Suite 1200
Fort Lauderdale, FL 33301
Telephone: 954/356-0011
954/356-0022 (fax)

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

J THOMPSON, et al., Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

1-800 CONTACTS, INC., et al.,

Defendants.

) No. 2:16-cv-01183

) CLASS ACTION

) Honorable Judge Tena Campbell

) Honorable Magistrate Judge Dustin B. Pead

) PLAINTIFFS' STATUS REPORT

The Court requested that plaintiffs file a status report by August 20, 2018, prior to the status conference scheduled for August 22, 2018. ECF No. 173 at 2. Plaintiffs hereby submit this filing in response to the Court's directive to plaintiffs to report on the results of the parties' efforts to meet and confer regarding the four discovery-related items identified in the Court's August 9, 2018 order. Plaintiffs request that the Court hold a conference, as currently scheduled, for August 22, 2018 at 2:00 p.m. to consider issues regarding the production of transactional data.

I. The Terms of a Protective Order

The parties have been able to reach agreement on all provisions of a proposed protective order, except one. That provision concerns whether there should be a procedure for a defendant to disclose sensitive information to plaintiffs without having to disclose the same information to its co-defendants. Defendants are attempting to reach an agreement on this issue. Plaintiffs' concern is simply to ensure that defendants will not block or defer production of relevant competitively sensitive information because they do not want their competitors to be able to view this information.

Plaintiffs propose that the parties be given until August 24, 2018 to complete their negotiations and file an updated status report with the Court. If the parties have not agreed by then on the unresolved issue concerning the proposed protective order, plaintiffs propose that each side submit by August 28, 2018 a proposed order with its suggested language on the disputed provision in redline and a two-page letter brief setting forth the party's position on the disputed issue, which will then be ripe for resolution by the Court.

II. The Timing of Each Defendant's Respective Production of Materials from the FTC Action

1-800 Contacts

On August 20, 2018, 1-800 produced to plaintiffs the documents that it produced to the government in the FTC action and also produced transcripts of investigational hearing and deposition testimony by current and former 1-800 Contacts employees and agents, exhibits to those depositions and investigational hearings, written discovery, and a public version of the trial transcript.

1-800 is currently reviewing certain of the documents produced in the FTC action by third parties and transcripts to determine if either contain information designated as confidential by third parties in the FTC action. To the extent these materials contain confidential information, 1-800 believes it is required to follow the procedure required by the protective order entered in the FTC action before producing these materials in this action. As required by the protective order in the FTC action, 1-800 intends to provide written notice to third-parties in that action of plaintiffs' request for confidential materials in this matter.

Walgreens/Vision Direct

Walgreens and Vision Direct produced on August 20, 2018 the documents that they produced to the government in the FTC action and the depositions or investigational transcript(s) of their witness(es) who testified in that action.

Luxottica

Luxottica has represented that it will produce its FTC materials no later than August 31, 2018.

III. The Accessibility of Transactional Data

1-800 Contacts

The parties are in active negotiation about the available data fields and the various repositories that contain 1-800's transactional data. 1-800 has provided a list of fields that are (and are not) available, and the parties are continuing to confer regarding those fields. The parties have agreed that 1-800 will provide plaintiffs a transactional data sample, which plaintiffs will evaluate to determine if the form and scope of the data is acceptable. 1-800 has said it can produce its transactional data by September 28, 2018, as plaintiffs requested.

Walgreens

Limited progress has been made regarding Vision Direct and Walgreens' production of transactional data. Walgreens has indicated that it believes it has some of the requested information dating back to 2009, and has provided plaintiffs with some information about some of the available fields. Walgreens is still investigating the availability of other fields requested by plaintiffs and still has not provided plaintiffs with enough information about the accessibility and availability of the data for the parties to move forward. Vision Direct first told plaintiffs on August 20, 2018 that it has responsive data and the data goes back to 2004. At the same time, Vision Direct also provided plaintiffs with some information about available fields but that information is still incomplete, and again, does not suffice to enable the parties to move forward. Neither Walgreens nor Vision Direct indicated when they will have information regarding the other fields plaintiffs requested.

Vision Direct and Walgreens have indicated that they are working in good faith to meet the September 28, 2018 deadline proposed by plaintiffs but are unable to estimate when the production might begin (or might be completed), and how long it will take to run the query and collect and produce the data once the parties agree on what needs to be collected.

Luxottica

Luxottica has confirmed that it has a number of the data fields sought by plaintiffs and is continuing to investigate several of plaintiffs' questions about the content of certain data fields. Luxottica is also still investigating whether it has data back to 2004, when the class period begins. Without this information, the parties are unable to complete their discussions on what fields will be produced and progress to the next stage, where a sample of the data will be produced.

IV. Summary of Status of Production Transaction Data

1-800 has represented that it should be able to meet a September 28, 2018 deadline for production of its transactional data.

Given the limited progress made since the hearing on July 26, 2018, plaintiffs are deeply concerned about Vision Direct/Walgreens' and Luxottica's ability to produce their transactional data with sufficient time for plaintiffs and their experts to evaluate, scrub, and analyze the data prior to filing class certification papers. Although it has been more than three weeks since the hearing and more than one-and-a-half months since plaintiffs served their discovery requests, neither defendant can represent that it will be complete the data production by the end of September or even state when it will be in a position to do so. Luxottica has estimated that it will take approximately one month to pull the data once the parties agree on the fields to be produced, and it may be weeks before that process can begin. As for Vision Direct and Walgreens, they are still gathering preliminary information about their data fields, and while they say they are working in good faith to meet a September 28, 2018 deadline, the parties have yet to begin the back-and-forth necessary to understand what transactional data Vision Direct and Walgreens have and which fields from that data plaintiffs need.

Unless Vision Direct/Walgreens and Luxottica ramp up their investigations, it appears unlikely that plaintiffs will receive the transactional data by the end of September. Any delay substantially beyond end of September may prejudice plaintiffs' ability to prepare their class certification papers under the schedule established by the Court less than two weeks ago. Walgreens, which is now the parent company of Vision Direct, and Luxottica are both large companies with significant resources, which should be able to meet a September 28, 2018 production deadline if they devote the requisite resources to the task. Accordingly, plaintiffs intend to ask at the August 22, 2018 hearing that Walgreens and Luxottica be ordered to provide all of the data field-related information plaintiffs have requested by August 31, 2018, and further be ordered to substantially complete their data production by September 28, 2018.

V. ESI Protocol

The parties have reached an agreement regarding a protocol governing the parties' production of electronically stored information. The parties' agreement is attached as Exhibit A.

DATED: August 20, 2018

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
DAVID W. MITCHELL (Admitted *Pro Hac Vice*)
BRIAN O. O'MARA
STEVEN M. JODLOWSKI (Admitted *Pro Hac Vice*)

s/ David W. Mitchell
DAVID W. MITCHELL

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

DATED: August 20, 2018

BOIES SCHILLER FLEXNER LLP
CARL GOLDFARB (Admitted *Pro Hac Vice*)

s/ Carl Goldfarb
CARL GOLDFARB
(Signed by Filing Attorney with permission.)

401 East Las Olas Blvd., Suite 1200
Fort Lauderdale, FL 33301
Telephone: 954/356-0011
954/356-0022 (fax)

BOIES SCHILLER FLEXNER LLP
SCOTT E. GANT (Admitted *Pro Hac Vice*)
MELISSA F. ZAPPALA (Admitted *Pro Hac Vice*)
1401 New York Ave., NW
Washington, DC 20005
Telephone: 202/237-2727
202/237-6131 (fax)

Counsel for Plaintiffs and
Interim Lead Counsel for the Putative Class

ANDERSON & KARRENBURG
THOMAS R. KARRENBURG (#3726)
JARED SCOTT
50 West Broadway, Suite 700
Salt Lake City, UT 84101
Telephone: 801/534-1700
801/364-7697 (fax)

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on August 20, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ David W. Mitchell

DAVID W. MITCHELL

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

E-mail: davidm@rgrdlaw.com

Mailing Information for a Case 2:16-cv-01183-TC-DBP Thompson et al v. 1-800 Contacts, Inc. et al

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Jeffrey C. Bank**
jbank@wsgr.com,ageritano@wsgr.com,lalmeida@wsgr.com
- **Steven H. Bergman**
steven-bergman@rbmn.com,ladonna-whelchel@rbmn.com,info@bergmanesq.com
- **Dorn Bishop**
db@markhamlawfirm.com,kim@dornbishoplaw.com
- **Alycia N. Broz**
anbroz@vorys.com
- **Kuntal Cholera**
kcholera@cov.com
- **Robert S. Clark**
rclark@parrbrown.com,calendar@parrbrown.com,afoutz@parrbrown.com
- **Justin A. Cohen**
jcohen@wsgr.com
- **Robert M. Corp**
rcorp@wsgr.com,ageritano@wsgr.com
- **Jerry R. DeSiderato**
jdesiderato@dilworthlaw.com,vmckeage@dilworthlaw.com
- **Tyler Anne Dever**
tyler-dever@rbmn.com,ladonna-whelchel@rbmn.com
- **Jason Eliaser**
je@markhamlawfirm.com
- **Scott E. Gant**
sgant@bsflp.com
- **Carl E. Goldfarb**
cgoldfarb@bsflp.com,krenae@bsflp.com,mcalvin@bsflp.com,hgreen@bsflp.com
- **Richard M. Golomb**
rgolomb@golombhonik.com,emalloy@golombhonik.COM
- **Kenneth J. Grunfeld**
kgrunfeld@golombhonik.com,emalloy@golombhonik.COM
- **Robert P. Harrington**
rharrington@rqn.com,jevans@rqn.com,docket@rqn.com
- **Brent O. Hatch**
bhatch@hjdllaw.com,brenthatch@gmail.com,administrator@hjdllaw.com

- **Mike Houchin**
mike@consumersadvocates.com
- **Steven M. Jodlowski**
sjodlowski@rgrdlaw.com,akelly@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Patrick E. Johnson**
pjohnson@cohnekinghorn.com,jdannenmueller@cohnekinghorn.com,msine@cohnekinghorn.com
- **Ashley D. Kaplan**
ashley.kaplan@mto.com
- **Thomas R Karrenberg**
tkarrenberg@aklawfirm.com,rdodge@aklawfirm.com
- **Jason M. Kerr**
jasonkerr@ppktrial.com,johnsnow@ppktrial.com,elizabeth.phelps-robbins@ppktrial.com,steven.garff@ppktrial.com,angelajohnson@ppktrial.com
- **Andrew Lazerow**
alazerow@cov.com
- **William A. Markham**
wm@markhamlawfirm.com,la@markhamlawfirm.com,aa@markhamlawfirm.com
- **Ronald Marron**
ron.marron@gmail.com,ecf@consumersadvocates.com
- **David W. Mitchell**
davidm@rgrdlaw.com,ckopko@rgrdlaw.com
- **Paul T. Moxley**
pmoxley@cohnekinghorn.com,msine@cohnekinghorn.com,mcerutti@cohnekinghorn.com
- **Sara M. Nielson**
snielson@parrbrown.com,acoats@parrbrown.com,calendar@parrbrown.com
- **Chul Pak**
cpak@wsgr.com,ageritano@wsgr.com
- **Rebecca A. Peterson**
rapeterson@locklaw.com,bgilles@locklaw.com
- **Justin P. Raphael**
justin.raaphael@mto.com,mark.roberts@mto.com
- **Amanda McMurray Roe**
amroe@vorys.com
- **Kenneth J. Rubin**
kjrubin@vorys.com
- **Jared D. Scott**
jscott@aklawfirm.com,krubino@aklawfirm.com
- **Robert K. Shelquist**
rkshelquist@locklaw.com,kjleroy@locklaw.com,bgilles@locklaw.com
- **Rohit Kumar Singla**
rohit.singla@mto.com,dolores.reyes@mto.com

- **Heather M. Sneddon**
hsneddon@aklawfirm.com,krubino@aklawfirm.com
- **David J. Stanoch**
dstanoch@golombhonik.com,emallo@golombhonik.com
- **Samuel C. Straight**
sstraight@rqn.com,bsears@rqn.com,docket@rqn.com
- **Lara A. Swensen**
lswensen@hjdllaw.com,administrator@hjdllaw.com
- **Joshua D. Wolson**
jwolson@dilworthlaw.com,jabed@dilworthlaw.com
- **Melissa Felder Zappala**
mzappala@bsflp.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

Comma delimited list of email addresses that may be used for copying and pasting into your own email program:

jbank@wsgr.com,ageritano@wsgr.com,lalmeida@wsgr.com,steven-bergman@rbmn.com,
ladonna-whelchel@rbmn.com,info@bergmanesq.com,db@markhamlawfirm.com,kim@dornbishopl原因.com,
anbroz@vorys.com,kcholera@cov.com,rclark@parrbrown.com,calendar@parrbrown.com,
afoutz@parrbrown.com,jcohen@wsgr.com,rcorp@wsgr.com,jdesiderato@dilworthlaw.com,
vmckeage@dilworthlaw.com,tyler-dever@rbmn.com,je@markhamlawfirm.com,sgant@bsflp.com,
cgoldfarb@bsflp.com,krenae@bsflp.com,mcalvin@bsflp.com,hgreen@bsflp.com,
rgolomb@golombhonik.com,emallo@golombhonik.com,kgrunfeld@golombhonik.com,rharrington@rqn.com,
jevans@rqn.com,docket@rqn.com,bhatch@hjdllaw.com,brenthatch@gmail.com,
administrator@hjdllaw.com,mike@consumersadvocates.com,sjodlowski@rgrdlaw.com,akelly@rgrdlaw.com,
e_file_sd@rgrdlaw.com,pjohnson@cohnecinghorn.com,jdannenmueller@cohnecinghorn.com,msine@cohnecinghorn.com,
ashley.kaplan@mto.com,tkarrenberg@aklawfirm.com,rdodge@aklawfirm.com,jasonkerr@ppktrial.com,
johnsnow@ppktrial.com,elizabeth.phelps-robbins@ppktrial.com,steven.garff@ppktrial.com,angelajohnson@ppktrial.com,
alazerow@cov.com,wm@markhamlawfirm.com,la@markhamlawfirm.com,aa@markhamlawfirm.com,
ron.marron@gmail.com,ecf@consumersadvocates.com,davidm@rgrdlaw.com,ckopko@rgrdlaw.com,
pmoxley@cohnecinghorn.com,mcerutti@cohnecinghorn.com,snielson@parrbrown.com,acoats@parrbrown.com,
cpak@wsgr.com,rapeterson@locklaw.com,bgilles@locklaw.com,justin.rafael@mto.com,
mark.roberts@mto.com,amroe@vorys.com,kjrubin@vorys.com,jscott@aklawfirm.com,
krubino@aklawfirm.com,rkshelquist@locklaw.com,kjleroy@locklaw.com,rohit.singla@mto.com,
dolores.reyes@mto.com,hsneddon@aklawfirm.com,dstanoch@golombhonik.com,emallo@golombhonik.com,
sstraight@rqn.com,bsears@rqn.com,lswensen@hjdllaw.com,jwolson@dilworthlaw.com,
jabed@dilworthlaw.com,mzappala@bsflp.com

(Too many email addresses to create a "mailto" link - more than 1500 characters.)